

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7099 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

(No. 1 to 5 NO)

CHINUBHAI V. MODI

Versus

DISTRICT DEVELOPMENT OFFICER

Appearance:

Mr. Unwala for MR PK JANI for Petitioner

MR MUKESH R SHAH for Respondent No. 1

SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 19/02/98

ORAL JUDGEMENT

The petitioner before me Shri. C.V. Modi came to be appointed on 29th November 1982 on a newly created post of Office Superintendent by the Respondent no.1, and since then he was working on the said post till his superannuation on 31st. March 1986. The say of the petitioner in the petition is that, he was required to be

given the pay scale available to a regular employee in the pay scale of Rs.560-900 during this period. The department has not accepted the case of the petitioner. The matter was carried before the Gujarat Civil Services Tribunal, Gandhinagar, by filing Appeal No. 650 of 1986 which came to be dismissed under the orders dated June 05, 1987. Later on the petitioner has initiated this proceedings before this Court. They are under Article 226 and 227 of the Constitution.

Ld. counsel Mr. Unwala who appears for Ld. counsel Mr. P.K. Jani for the petitioner urges that, despite the fact that the petitioner came to be appointed purely temporarily and on adhoc basis, under the orders dated November 29, 1982, available at Annexure-A to the petition, he would be entitled to the pay scale which he is asking for. The pay scale according to the petitioner should be Rs.560-900. Ld. counsel urges that, merely because the petitioner has accepted the above said orders appointing him purely on temporary and on adhoc basis, he should not be deprived of the pay scale, which would be available to an employee, who would be employed by the concerned respondent on the regular basis. The reliance is being placed upon the Supreme Court pronouncement in Bhagwan Dass and others, Petitioners vs. State of Haryana and others, Respondents, A.I.R. 1987, S.C. pg. 2049.

The affidavit-in-reply filed by the DDO, District Panchayat at Godhra specifies the facts and circumstances of the case, under which the petitioner came to be accommodated on a post temporarily and purely on adhoc basis. The affidavit-in-reply makes it clear that somewhere in April 1982 it was noticed that the petitioner was working at Godhra since last about 11 years as Head Clerk, and was drawing his salary in the pay scale of Rs.425-800. In the interest of the administration, the petitioner came to be transferred under the orders dated April 27, 1982 as Assistant Taluka Development Officer at Shehra, but the petitioner was not in a position to move out of Godhra on the ground that he was suffering from a serious heart ailment. Thus, because of his own personal difficulties, after having withdrawn the Civil Suit filed before the Ld. Civil Judge at Godhra, and after having failed in the Appeal before the Development Commissioner, the petitioner had urged that his case requires a sympathetic consideration and that, he may be accommodated at Godhra itself. The affidavit-in-reply further shows that, as there was no vacant post of Head Clerk or Aval Karkoon or any other post in the same pay scale, the petitioner came to be

appointed on the post in question temporarily and purely on adhoc basis. It is also made clear that, the Government had, in the Department of Health and Family Welfare, issued a notification under which the post of Office Superintendent in the scale of Rs.500-900 under the scheme known as 'Integrated Child Development Scheme' was sanctioned, but the Government had not issued the necessary guidelines regarding the filling up of the said post. Since the regular appointment therefore could not be made, the petitioner's request to post him at Godhra against the aforesaid post but in the pay scale of Rs.425-800 came to be sympathetically considered and accepted, because of the fact that, he was having a serious heart ailment.

This affidavit therefore would go to show that, ultimately the petitioner came to be accommodated under the orders of appointment available at Annexure-A, to which I have made a reference earlier. It has been intimated hereinabove that the above said appointment was purely on a temporary and adhoc basis. Not only this but there is a specific stipulation in this orders of appointment that, the petitioner would be nonetheless entitled to the very same pay scale and perks which he was getting at the relevant time. The petitioner has accepted this appointment order and has worked on the post till his superannuation. This specific clause in the orders of appointment would go to show that, he was to work on a post purely temporarily and on an adhoc basis on the same pay scale. This came to be done upon a request of the petitioner so that he could be accommodated at the very same station. It therefore appears that, on facts the petitioner is not able to substantiate his case that, despite the above said orders he would be entitled to the pay scale which would be available to a person, who could be later on appointed on the said post after getting the clearance and guidelines by the Government.

The decision of the Supreme Court in case of Bhagwan Dass and others (supra) would not come to the rescue of the petitioner. It was a case in which an artificial classification came to be adopted between the supervisors by carving out a difference as, supervisors appointed on regular basis, and those appointed on temporary basis in the Education Department. The Supreme Court has taken the view that, despite this artificial classification, the persons appointed on temporary basis were putting the same work as it was being put in by the supervisors appointed on regular basis. It is in this facts and circumstances of the case that the Supreme

Court had said that the principle of "equal pay for equal work" could be invoked. The fact situation before me arising out of the petition and the orders of appointment are entirely different. The petitioner before me is asking for the pay scale which could have been given to a person who could have been appointed under the guidelines to be issued by the Government, which would govern the process of recruitment of appointment of an employee on the newly created post.

Thus, in my opinion the petitioner has not been able to make out his case. The petition therefore requires to be dismissed. I order accordingly. Rule shall stand discharged. No order as to costs.

/vgn.